



# Universal Communication Networks, LLC

April 8 1998

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street N.W., Room 222  
Washington DC 20554

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Re: CC Docket #98-1

In the matter of the state of Minnesota's request for declaratory ruling regarding applicability of Section 253 of the Federal Telecommunications Act to longitudinal easements on the state freeway system.

Dear Ms. Salas:

I have reviewed the various letters and papers urging the Federal Communication Commission to act on the request and to declare Minnesota's agreement consistent with section 253 of the Telecommunications Act of 1996 as the State contends.

I have also reviewed letters from the various associations and companies opposing the petition filed by the state of Minnesota. After reviewing the various comments it appears that the opposition letters have common areas of concern as they relate to the project.

Much of the concern appears to be the exclusive access to state highway rights-of-way and the possibility that it would prohibit carriers from providing telecommunication services and that the exclusive agreement will foreclose the ability of other carriers to provide service in an economically efficient manner.

Concern also exists as to whether other carriers wanting to lay fiber along the interstate will not have the ability to access the network, if ICS/UCN has an exclusive right to lay fiber along the interstate highways.

As part of our agreement with the State to access the interstate highways, we are obligated to provide fiber optic cable along rural routes where the major CLECs, local telecommunication service providers, and primary telecommunication service provider's networks are not prevalent. The State has experienced substantial growth on the interstate highways due to rural flight of the population to the metro areas of the city where greater economic opportunity exist. This, in part, has created an expansion of the highways, congestion on the highways, and the need for the state highways to improve their infrastructures, develop advanced intelligent traffic systems (AITS), find ways to provide economic development for the rural areas of the State to curb rural flight.

Current telecommunication service providers, telephone companies, Internet companies, and all other telecommunication service providers have substantial fiber in metropolitan areas of the state. Telecommunication service providers who currently have fiber in the metropolitan areas, also have access to alternative routes, in addition to the new routes ICS/UCN is making available.

As you review the contract between ICS/UCN, LLC and Stone & Webster and the State of Minnesota, you will note that in exchange for approximately 800 miles of right of way along interstate highways we are also obligated to provide approximately 900 miles of fiber along rural non exclusive routes where there are not many telecommunication service provider networks.

In the interstate ROW and on the rural routes ICS/UCN is willing to lay other's fiber in the same trench as ours and we are willing to sell and lease fiber, and sell capacity to all telecommunication service providers. It is clear that ICS/UCN supports and will allow competitive service providers equal access to the network!

ICS/UCN, LLC is a carrier's carrier, wishing to build a telecommunication fiber optic state of the art network, providing broadband capabilities to all telecommunication service providers. In order for ICS/UCN, LLC to make its market plan work, we will allow others to collocate their fiber along side fiber in our network. We feel that making our network and the rights-of-way available in all possible ways, that we clearly support the intent of section 253 (a), (b), and (c) of the Telecommunication Act of 1996. We feel this way because we will be laying other's fiber which they own and control with their electronics at reduced cost. We are doing this at great risk by inviting broadband competition in order to also provide broad band services along the rural routes.

In order for ICS/UCN to service the \$100 million or greater construction project it will have to lease or sell dark fiber in its network, in order to generate the cash flow required to maintain the network and to service outstanding debt. Consequently, ICS/UCN has no incentive to not be competitive in the provision of broadband services. Finally, we will lease capacity as an ongoing revenue stream to also service the debt, support the operations of the network, and assure that the network is continually maintained and upgraded as required. The point being, that if we are not competitive with our rates then we will not be in a position to repay the outstanding obligation required to build the network. Clearly this eliminates the concern that ICS/UCN, LLC "will have an incentive to engage in anti-competitive pricing and other practices intended to provide unfair advantage to its telecommunication affiliates".

It is very important to understand that ICS/UCN does not have any affiliated or subsidiary companies. We are not affiliated with a major telephone company, Internet company, or affiliated with any other major telecommunication service provider. ICS/UCN, LLC is a stand alone company dedicated to providing broad band services solely. We have recognized the harm that entities with monopoly control of facilities can cause to their competitors by delaying installation of equipment or providing poor maintenance.

ICS/UCN, LLC clearly must achieve installation milestones, maintain proper equipment, and provide excellent service and maintenance to compete for telecommunication service providers business.

I would also like to address the concern about ICS/UCN, LLC having a 10 year exclusive arrangement with the state of Minnesota. We have an exclusive right to lay fiber along the interstate highways which includes the obligation to lay the fiber of all other telecommunication service providers. We will be doing this at reduced cost to the telecommunication provider as an incentive for them to lay their fiber and help offset our construction cost for the network.

Secondly, although we were granted a 10 year exclusive right to lay fiber along the interstate highways, we have a 30 year obligation to maintain the network, provide service to the state and provide wholesale bandwidth on a non discriminatory and competitive basis. We have taken on a substantial obligation knowing that the only way we could fulfill the obligation is to provide broadband services to all telecommunication service providers. We are clearly not in competition with any of them. We seek them all to support our endeavor in Minnesota.

Attached I have summarize as best I could the salient points outlined by the companies opposed to the petition filed by the state of Minnesota, related to Section 253 of the Telecommunications Act of 1996. In those comments I briefly answer the points they pose. I truly hope this will help you understand ICS/UCN, LLC's position and how we intend to comply fully with all aspects of the Telecommunication Act of 1996.

**Section 253 (a):**

*"No State or local statute or regulation or other State or local legal requirement may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or interstate telecommunication service".*

**ICS/UCN Response:**

The contract between the State and ICS/UCN,LLC (ICS) was negotiated after the State submitted a RFP to all qualified and interested parties. All interstate and intrastate telecommunication service providers were allowed to respond to the RFP and I assume they either did or choose not to. Part of the RFP response by ICS was that ICS would provide nondiscriminatory service to all telecommunication service providers, including interstate and intrastate telecommunication service providers. The contract allows and also requires ICS and Stone & Webster (S&W) to (1); allow intrastate and intrastate service providers to access the network by having ICS and Stone & Webster lay interstate and intrastate telecommunication service providers fiber in the construction trench; (2); allow the interstate and intrastate telecommunication

service providers to purchase or lease fiber located in the network to be constructed; and (3); allow interstate and intrastate telecommunication service provider access to lit capacity of the network. All telecommunication service providers are being given the opportunity to own, operate, and maintain telecommunication services along the longitudinally freeway rights-of-way in the State of Minnesota.

All the above is required at nondiscriminatory and competitive rates. Because the contract provides for interstate and intrastate telecommunication service providers access to the network and the ability to lay their own fiber along the rights-of-way proposed, the contract does not prohibit any telecommunication service provider access to the network or provide ICS/UCN a competitive advantage. The contract does not allow any other telecommunication service provider a competitive advantage.

Because of the unique allowance of all telecommunication service providers to access the network in any manner they choose, (i.e.; lay their own fiber during the construction phase, or chose to lease or purchase fiber within the network; and/or purchase lit capacity of the network once it is operational) no service provider is restricted to one or another facility or routes. Contradictory to what has been stated, this network will allow the service providers reduced costs of construction by the sharing of construction costs due to the collocation provision of the contract, and consequently, will enhance competition by allowing smaller and less well capitalized telecommunication service providers improved opportunity to expand.

All telecommunication service providers will continue to enjoy alternative routes, use of their own and other networks, aerial , wireless and other methods of telecommunication service delivery. We are clearly at risk from a competitive standpoint and clearly do not have any guarantees of success.

Consequently, because the ICS network allows all competing telecommunication service providers to enter the markets which may be provided by the ICS network, and does not place restrictions or limitations on any telecommunication service providers, the State is well within the requirements of Section 253(a) and clearly supports the intent of the Telecommunications Act of 1996.

Additionally, because ICS is a wholesaler of bandwidth the telecommunication service providers ( not a provider of service to the general public), telecommunication service providers will dictate the rates, terms and conditions under which ICS will sell bandwidth services. Stated another way, the market will dictate the price of bandwidth telecommunication service providers will be willing to pay. Telecommunication service under the Act is defined as "the offering of telecommunications for a fee directly to the public", or "to such users as to be effectively available directly to the public". ICS clearly will not be providing

service to the public either directly or indirectly as it is totally a wholesaler of bandwidth with no interest at this time in providing any telecommunication services.

**Section 253(b):**

*Permits states to impose requirements necessary to (a) "preserve and advance universal service," (b) "protect the public safety and welfare", (c) ensure the continued quality of telecommunication services," and (d) "safeguard the rights of the consumers".*

**ICS/UCN Response:**

ICS/UCN has agreed to contractually provide universal telecommunication services. ICS/UCN, as a fiber optic bandwidth provider (carrier's carrier), seeks to allow and provide telecommunication carrier services to any and all telecommunication service providers. Since ICS does not directly or indirectly (ICS does not have any affiliated relationships with any telecommunication service providers) provide telecommunication services, it willingly seeks to provide transport services to any and all service providers wanting to utilize the network.

The contract with the State will also assure that (b) the public safety and welfare is protected, as this contract does allow access to the interstate rights-of-way of the State to all telecommunication service providers, while at the same time limiting congestion activity on the interstate highways, which are the more heavily traveled routes into and out of the metropolitan areas. Other telecommunication service providers continue to have unlimited access to approximately 1,000 miles of rural state trunk highways along the proposed routes as well as the routes we will make available to them. Additionally, alternative rights-of-way (e.g. railroads, utilities) are available. Because the State selected a bandwidth wholesale provider (carrier's carrier) to be the contractor for the installation, and because the contract specifically provides that access to the network must be applied in a nondiscriminatory manner, this provides a workable marriage assuring that the safety of the highway will be maintained while providing equal access to the negotiated rights-of-way by all telecommunication service providers.

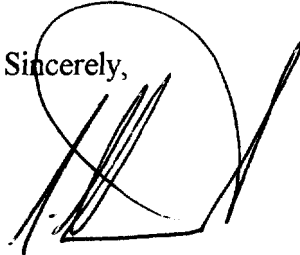
The quality of the telecommunication services (c) will be impacted positively, as a greater number of providers will now have access to high speed data bandwidth routes, at reduced costs, and with the ability to compete with other more entrenched and capitalized telecommunication service providers.

The contract signed with the State of Minnesota will also safeguard the rights of the consumer (d) as additional telecommunication services will be made available to the metropolitan areas of the State, while also providing high speed fiber optic

capabilities to the rural areas of the State. Because the network will reach the rural areas of the State, all telecommunication service providers have the opportunity to provide service to those areas. They will now be able to provide service economically. The State is charged with developing the manner and methods of access that apply equally to all competitors. The State and ICS have done exactly that.

We urge the Federal Communications Commission to act expeditiously in granting the request and declaring Minnesota's agreement consistent with Section 253 of the Federal Communications Act.

Sincerely,

A handwritten signature in black ink, appearing to be 'Al Strock', written over a circular stamp or seal.

Al Strock  
President, ICS/UCN,LLC and UCN, LLC